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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	-	Docket No. 3:15-cr-358-3
	-	
Plaintiff,	-	Toledo, Ohio
	-	January 21, 2016
v.	-	Detention Hearing
	-	
ASIF AHMED SALIM,	-	
	-	
Defendant.	-	

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE JACK ZOUHARY
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiffs:	United States Attorneys' Office
	By: Christos N. Georgalis
	Suite 400
	801 Superior Avenue, W
	Cleveland, OH 44113
	(216) 622-3859
For the Defendant:	Linda G. Moreno
	P.O. Box 10985
	Tampa, FL 33679
	(813) 247-7454
Court Reporter:	Tracy L. McGurk, RMR, CRR
	1716 Spielbusch Avenue
	Toledo, Ohio 43604
	(419) 213-5520

Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 2:46 p.m.)

2 THE COURT: We're here on case 15-CR-358-03,
00:00:08 3 United States versus Asif Ahmed Salim. The Defendant is
00:00:14 4 present in court along with his counsel, Linda Moreno.
00:00:17 5 And on behalf of the Government we have AUSA Christos
00:00:25 6 Georgalis. And with him are Agents Laura Lebo and Sean
00:00:27 7 Pieja.

00:00:27 8 The Defendant is charged in an indictment
00:00:30 9 filed in September of last year in three counts: Count
00:00:33 10 1, Conspiracy to Provide Material Support and Resources
00:00:36 11 to Terrorists; Count 2, Providing Material Support and
00:00:40 12 Resources to Terrorists; and Count 4, Conspiracy to
00:00:44 13 Obstruct Justice.

00:00:46 14 The Defendant was arraigned in November. We
00:00:49 15 had a pretrial conference in December. And the
00:00:52 16 Defendant has filed a motion for release, which brings
00:00:55 17 us together today. That was filed in January; it is
00:00:59 18 reflected on our docket as document number 34.

00:01:02 19 The Government has opposed in a filing
00:01:05 20 reflected in document number 35.

00:01:09 21 The Court has also been provided and counsel
00:01:11 22 have been provided with Pretrial Services reports. We
00:01:15 23 have two reports; a report from November 17-18 of 2015,
00:01:25 24 and then we have one from January 16. The latter report
00:01:31 25 is from our Pretrial Services Department here,

00:01:36 1 specifically Mark Miller, who is also present in court.
00:01:40 2 The earlier reports were from Virginia, and those have
00:01:45 3 been shared, as I indicated, with everyone as well.

00:01:50 4 The Court has had an opportunity to review
00:01:52 5 the motion, the opposition, the reports from Pretrial
00:01:57 6 Services. And I'll turn the floor over now to Defense
00:02:02 7 Counsel who may indicate to the Court whether it wishes
00:02:06 8 to offer any testimony, exhibits, or argument.

00:02:09 9 MS. MORENO: Thank you, Your Honor. I
00:02:12 10 appreciate it. Your Honor, I'm going to be proffering
00:02:17 11 on behalf of Mr. Salim with respect to my motion for
00:02:21 12 release. I do have a few family members that I do wish
00:02:25 13 to introduce to the Court, but I will be proffering what
00:02:28 14 they have to say. And if the Court has any questions
00:02:32 15 for them, because of the children and the family
00:02:35 16 situation, they're in the jury room, and I propose to
00:02:38 17 bring them out one at a time very briefly.

00:02:42 18 Before I do that, however, just with respect
00:02:44 19 to the motion and the response to the motion, it seems
00:02:53 20 that what we have proposed to this Court is as close to
00:02:58 21 a guarantee as possible with respect to the bail
00:03:02 22 conditions that we have proposed.

00:03:06 23 Not to repeat too much, I think the Court
00:03:08 24 knows that there are two properties that are to be
00:03:11 25 pledged that, given whatever appraisal values, market

00:03:16 1 values add up to maybe \$475,000. Both of those
00:03:22 2 properties are located in Gwinnett County in Georgia.
00:03:29 3 I have been in contact with Mr. Miller of
00:03:31 4 Pretrial Services, and we have discussed the issue of
00:03:34 5 custodians. Present today -- you will meet them, Your
00:03:39 6 Honor -- is Mr. Salim's mother-in-law, and -- Mr.
00:03:46 7 Salim's mother-in-law, Mr. Salim's wife, and Mr. Salim's
00:03:51 8 brother-in-law, and Mr. Salim's mother. Mr. Salim's
00:03:56 9 mother, who you will meet very briefly, Shakila Salim,
00:04:01 10 she is the custodian for the co-defendant in this case,
00:04:05 11 Sultane Salim. Sultane was released by the magistrate
00:04:11 12 several weeks ago, I believe seven or eight weeks ago in
00:04:15 13 this matter.

00:04:18 14 Mr. Salim's mother-in-law, Nikhat
00:04:24 15 Nizamuddin, who you will meet, is posting the family
00:04:27 16 property. A word about family property. And I know I'm
00:04:34 17 going about this in probably a different way, but I'm
00:04:37 18 giving Your Honor the overview first just very briefly.
00:04:40 19 The family property, which I would argue to the Court
00:04:44 20 has a component of a moral suasion to it in that this is
00:04:49 21 the family home that was built by Mr. Salim's in-laws
00:04:55 22 about 23 years ago. This is the home that his wife,
00:05:01 23 Farah, grew up in and that his sister-in-law, Sabrina,
00:05:06 24 grew up in.

00:05:07 25 As the Court knows, in my paperwork I have

00:05:11 1 also offered Sabrina Nizamuddin as a character reference
00:05:16 2 and as a supportive family member for Mr. Salim. She is
00:05:20 3 a current assistant district attorney also in Gwinnett
00:05:24 4 County, Georgia. The family is very, very close.

00:05:31 5 I think that the conditions with respect to
00:05:33 6 the properties: the GPS monitoring; the strict
00:05:37 7 electronic supervision; the surrender of passports,
00:05:41 8 which the family is willing to do today. His wife Farah
00:05:48 9 has brought her passport along with along with four
00:05:52 10 passports of the four children. They will surrender
00:05:55 11 those passports today. Mr. Salim himself has no
00:05:59 12 passport. I feel confident in saying it was seized and
00:06:04 13 in the custody of the Government. I also believe that
00:06:08 14 that passport was expired. He has no other passport, he
00:06:12 15 has no other travel documents.

00:06:14 16 THE COURT: Let me interrupt you. Can you
00:06:16 17 comment, is his passport in the custody of the
00:06:19 18 Government? Do you know?

00:06:25 19 MR. GEORGALIS: Judge, the agent told me he
00:06:27 20 doesn't know for certain, but he's pretty confident it
00:06:39 21 is in Government custody.

00:06:41 22 THE COURT: Do you know if it's expired or
00:06:43 23 not?

00:06:43 24 MR. GEORGALIS: No, we don't know that,
00:06:45 25 Judge. We will confirm that today.

00:06:49 1 MS. MORENO: Let me call his wife, Farah
00:07:01 2 Nizamuddin, into the courtroom, if I may. Excuse me,
00:07:08 3 Your Honor.

00:07:27 4 (Farah Nizamuddin enters the courtroom.)

00:07:37 5 MS. MORENO: Your Honor, I wanted to
00:07:40 6 introduces to the courtroom Asif Salim's wife, Farah
00:07:44 7 Nizamuddin.

00:07:46 8 THE WITNESS: How are you.

00:07:47 9 MS. MORENO: I would proffer to the Court
00:07:48 10 they've been married ten years. They have four
00:07:51 11 children. It is her family home that is being offered
00:07:53 12 as a property for security in this matter. I would tell
00:07:57 13 the Court that she is -- she's an American citizen born
00:08:02 14 and raised in Georgia. She has a degree in early
00:08:07 15 childhood education. As soon as Mr. Salim was arrested
00:08:13 16 in the UAE, Farah took the children and immediately
00:08:19 17 moved back. I would proffer that they have no home in
00:08:22 18 the UAE, no bank accounts, no property, no utility
00:08:30 19 accounts. The Visa has been cancelled. It turns out
00:08:36 20 that she has brought today to the Court -- and I just
00:08:42 21 received it really a few minutes ago -- documents that
00:08:47 22 reflect his employment when he was in the UAE for the
00:08:54 23 four years that they were there. And I haven't shown
00:08:57 24 this to counsel yet because I literally just got them.
00:09:01 25 But I would also offer this as an exhibit if the Court

00:09:04 1 is willing. I will describe these documents as showing
00:09:10 2 that he was employed from 2011 for a year at the
00:09:18 3 International School of Creative Science, and then for
00:09:21 4 the following three years he was employed at the GISTEC
00:09:28 5 Leveraging GIS & IT Synergy. And these documents
00:09:34 6 reflect each one of those years, employment letters, et
00:09:40 7 cetera.

00:09:40 8 THE COURT: I think we should have copies
00:09:42 9 made. Share it with the Government and provide it to
00:09:45 10 our deputy clerk, please.

00:09:53 11 MS. MORENO: I would also indicate to the
00:09:56 12 Court on behalf of Farah that they moved back to the
00:10:01 13 family home in Atlanta, which is where we requested Asif
00:10:06 14 to be supervised. And the children are going to be
00:10:09 15 starting school. Of course, they have their
00:10:14 16 grandparents there. The community ties issue are the
00:10:18 17 ties with the family.

00:10:25 18 I think, that's probably all I have. If the
00:10:28 19 Court wishes to ask -- if the Court wishes to ask Mrs.
00:10:37 20 Nizamuddin any questions -- sorry, Your Honor.

00:10:40 21 THE COURT: First of all, I'll give the
00:10:42 22 Government the opportunity.

00:10:43 23 Do you wish me to place her under oath, and
00:10:45 24 do you wish to ask any questions?

00:10:48 25 MR. GEORGALIS: No, Judge, we're not going

00:10:50 1 to ask that she be placed under oath. In lieu of that,
00:10:53 2 the Government has discussed with Ms. Moreno in chambers
00:10:58 3 a stipulation with this witness's knowledge.

00:11:00 4 Ms. Moreno, please correct me.

00:11:02 5 I think what we agreed is with respect to
00:11:04 6 the knowledge of the indictment and the charges in this
00:11:06 7 case, that the custodian's knowledge of the indictment
00:11:12 8 is limited to knowing that it's a conspiracy case
00:11:15 9 involving terrorism and that it's serious and nothing
00:11:18 10 further.

00:11:20 11 MS. MORENO: We would so stipulate, Your
00:11:22 12 Honor.

00:11:22 13 THE COURT: Very good.

00:11:26 14 MS. MORENO: If I may just have a moment
00:11:28 15 please, Judge.

00:11:34 16 That's all in terms of what I would proffer
00:11:37 17 on behalf of Mrs. Nizamuddin.

00:11:39 18 THE COURT: I may have questions, but I want
00:11:41 19 to see the documents first. So you may excuse her, and
00:11:44 20 let's just keep going.

00:11:47 21 THE WITNESS: Thank you.

00:11:54 22 THE COURT: While we're at a break, our
00:12:01 23 reporter may have some questions about spellings.

00:12:07 24 MS. MORENO: Coming in, Your Honor, is going
00:12:09 25 to be Nikhat, N-i-k-h-a-t, Nizamuddin,

00:12:18 1 N-i-z-a-m-u-d-d-i-n.

00:12:35 2 Your Honor, this is Mrs. Nizamuddin. I
00:12:38 3 would proffer to the Court on her behalf that she is
00:12:43 4 Asif Salim's mother-in-law, that she has known Asif for
00:12:47 5 over ten years, that she is the owner of the property
00:12:52 6 family home -- she and her husband are the owners of the
00:12:56 7 family home that they built some 23 or 24 years ago.
00:13:01 8 And that this is -- she's also Farah's mother, and she's
00:13:05 9 also Sabrina's mother, Sabrina being the ADA that I
00:13:09 10 previously referenced. Mrs. Nizamuddin is an American
00:13:15 11 citizen. I have discussed with her what her
00:13:18 12 responsibilities would be with respect to being a
00:13:21 13 custodian, the consequences if Asif did not comply with
00:13:26 14 all the conditions that hopefully will be set, that she
00:13:30 15 could lose her family home, the gave consequences that
00:13:35 16 would ensue. She has told me repeatedly she completely
00:13:40 17 understands that and she is very willing to move forward
00:13:44 18 in that regard. There is a message I am to deliver on
00:13:51 19 behalf of her husband, who is just -- couldn't be here.
00:13:55 20 He is in ill health, and he wanted the Court -- wanted
00:14:00 21 me to tell the Court that he completely supports this
00:14:02 22 action. He is also --

00:14:11 23 (Discussion had off the record.)

00:14:15 24 MS. MORENO: Sorry, Your Honor. He is the
00:14:17 25 co-owner of the property, and he's also an American

00:14:22 1 citizen, retired from the Department of Agriculture for
00:14:26 2 the State of Georgia.

00:14:28 3 THE COURT: Does the Government wish to
00:14:30 4 inquire of this witness under oath?

00:14:32 5 MR. GEORGALIS: No, Judge. Similar to the
00:14:34 6 first custodian, the parties have discussed a
00:14:37 7 stipulation in this case.

00:14:38 8 And again, Ms. Moreno, please correct me if
00:14:41 9 I'm wrong.

00:14:41 10 The parties have discussed what the
00:14:44 11 Defendant's mother-in-law knows about the charges in
00:14:46 12 this case, and we're prepared to stipulate that she
00:14:50 13 knows nothing of the charges in this case, doesn't know
00:14:53 14 what the case is about, and her knowledge is extremely
00:14:56 15 limited in that regard.

00:14:58 16 MS. MORENO: So stipulated, Your Honor.

00:15:00 17 THE COURT: Very good. Thank you.

00:15:13 18 (Mrs. Nizamuddin exits the courtroom.)

00:15:30 19 THE COURT: Who do we have next?

00:15:33 20 MS. MORENO: We have Shakila Salim, who is
00:15:37 21 Asif's mother, wanting to be introduced to the Court, is
00:15:42 22 here with the family. She is the custodian for Sultane
00:15:47 23 Salim, the co-defendant in this case.

00:16:00 24 Thank you, Your Honor. The Court can hear
00:16:03 25 me without the microphone? She wanted to be introduced

00:16:08 1 to the Court. If the Court had an issue with respect to
00:16:13 2 the supervision being in the state of Georgia, Mrs.
00:16:19 3 Salim has told me that she would gladly offer her home,
00:16:23 4 which I know there has already been a report done on and
00:16:26 5 she has been interviewed with respect to Sultane, the
00:16:30 6 co-defendant, also her son in this case, that she would
00:16:33 7 be willing to act as a custodian and have Asif be
00:16:38 8 supervised in Ohio. I am just bringing this to the
00:16:42 9 Court's attention for Your Honor's consideration. But
00:16:45 10 she has offered to do that, Your Honor.

00:16:48 11 THE COURT: Thank you. Does the Government
00:16:51 12 wish to cross-examine this -- or examine this witness
00:16:54 13 under oath?

00:16:54 14 MR. GEORGALIS: May I have a minute to speak
00:16:57 15 with Ms. Moreno, Judge?

00:17:00 16 THE COURT: You may.

00:17:02 17 (Discussion had off the record between
00:17:05 18 counsel.)

00:17:06 19 MR. GEORGALIS: No, Judge. No need to place
00:17:08 20 this witness under oath. But in lieu of that, the
00:17:10 21 Government and Ms. Moreno have discussed another
00:17:13 22 stipulation that would be similar to the stipulation for
00:17:16 23 the Defendant's mother-in-law, that being that this
00:17:18 24 custodian also has no knowledge of the case itself, has
00:17:21 25 not read the indictment and is unaware of the charges

00:17:24 1 alleged against her son.

00:17:29 2 MS. MORENO: Thank you, Your Honor.

00:17:34 3 THE COURT: Do you so stipulate or agree
00:17:37 4 with the stipulation?

00:17:37 5 MS. MORENO: So stipulated.

00:17:39 6 THE COURT: Thank you.

00:17:40 7 MS. MORENO: Judge, the last person I wanted
00:17:41 8 to introduce to the Court is James Smith. James Smith
00:17:46 9 is a current criminal investigator for the Assistant
00:17:53 10 District Attorney's Office in Georgia, Gwinnett County.

00:18:15 11 Your Honor, I met James today, although I'd
00:18:19 12 heard a lot about him. And I thought it was important
00:18:21 13 to introduce James to this Court. Again, he is the
00:18:26 14 husband of Sabrina, so James is Asif's brother-in-law.
00:18:33 15 And I wanted to inform the Court that if there were
00:18:36 16 any -- if the Court had any issues with respect to
00:18:39 17 supervision of Asif, that James has a very impressive
00:18:47 18 pedigree in terms of his career in the police department
00:18:52 19 of Gwinnett County, former homicide detective, and he
00:18:58 20 is, as I said, the current investigator for the DA's
00:19:02 21 Office and that he has offered to also be a custodian
00:19:07 22 for Asif, to personally drive and make sure he makes any
00:19:11 23 court appearance that this Court orders for him to make,
00:19:14 24 that he will do anything that he can to insure that Asif
00:19:20 25 complies with all the conditions of confinement. And it

00:19:25 1 is also his family home that is the second property that
00:19:28 2 is being offered in this case for -- as collateral
00:19:37 3 surety, Your Honor.

00:19:39 4 Does the Court have any questions for Mr.
00:19:40 5 Smith?

00:19:42 6 THE COURT: Mr. Smith, can you tell me what
00:19:45 7 your current occupation is and who your current employer
00:19:48 8 is?

00:19:49 9 MR. SMITH: Yes, Your Honor. I'm currently
00:19:51 10 employed as a DA investigator in Gwinnett County,
00:19:55 11 Georgia. I'm currently employed as a DA investigator
00:20:10 12 with Gwinnett County DA's office. My employer is the
00:20:15 13 District Attorney of Gwinnett County, Georgia.

00:20:19 14 THE COURT: What kind of crimes do you
00:20:21 15 investigate?

00:20:22 16 MR. SMITH: Major crimes: homicide, child
00:20:26 17 molestation, rape, anything that's a felony.

00:20:28 18 THE COURT: Have you reviewed the indictment
00:20:29 19 in this case against the Defendant?

00:20:30 20 THE WITNESS: I have not. I've never seen
00:20:32 21 it.

00:20:32 22 THE COURT: So you do not have any knowledge
00:20:35 23 with respect to the allegations, how serious they may or
00:20:42 24 may not be, that sort of thing; is that fair to say?

00:20:45 25 THE WITNESS: I have no idea what the

00:20:46 1 allegations are. I'm aware of generally what the
00:20:48 2 allegations are. I've not reviewed the indictment. I'm
00:20:52 3 not aware of the facts of the case. Basically I'm
00:20:54 4 here -- to be honest, there's --

00:20:58 5 THE COURT: It's a good time to be honest
00:21:00 6 while standing in the well of a federal courtroom.

00:21:05 7 THE WITNESS: I've never met Asif before.
00:21:07 8 This is the first time I've ever seen him. There's
00:21:10 9 really no emotional connection between Asif and I. I
00:21:12 10 know you could look at that one way or the other.
00:21:15 11 However, I'm willing to do whatever the Court asks to
00:21:18 12 make sure he shows up for all of his court appearances.
00:21:20 13 Like the attorney said, I will bring him here myself if
00:21:23 14 I have to. If they want me to wake up at 2:00 in the
00:21:26 15 morning and drive to the house, I'll do that. But as
00:21:28 16 far as the facts of the case, no, I have no idea as far
00:21:31 17 as what all the details are involved in that.

00:21:34 18 THE COURT: I take it since you've never met
00:21:36 19 him before -- well, I'm not sure of the answer to this
00:21:40 20 question, so let me ask you. During the four years that
00:21:42 21 he was in the United Arab Emirates, did you have any
00:21:47 22 contact with him or his wife?

00:21:48 23 THE WITNESS: After I married my wife.

00:21:51 24 THE COURT: Which was when?

00:21:52 25 THE WITNESS: 2012, July 13, 2012.

00:21:56 1 THE COURT: I take it he wasn't present for
00:21:57 2 that wedding?

00:21:58 3 THE WITNESS: No. We exchanged two to three
00:22:01 4 emails, just congratulations. I said thank you. And
00:22:04 5 that was it.

00:22:05 6 THE COURT: So you have no knowledge of what
00:22:09 7 he was doing in the United Arab Emirates, what was
00:22:14 8 happening there? You had no contact with him?

00:22:16 9 THE WITNESS: No. My understanding was he
00:22:18 10 had a job there and he was working, and that's where his
00:22:21 11 family was.

00:22:21 12 THE COURT: Neither you nor your wife
00:22:24 13 visited him or his family while they were there?

00:22:28 14 THE WITNESS: I never have. My wife went to
00:22:30 15 India, but I don't know that they stopped in the UAE; I
00:22:34 16 don't know what they did in India -- to get stuff for
00:22:35 17 our wedding. But I've never been.

00:22:37 18 THE COURT: I don't know if the Government
00:22:38 19 has any questions.

00:22:39 20 Do you have any questions, counsel?

00:22:41 21 MR. GEORGALIS: Maybe just a few, Judge.

00:22:44 22 THE COURT: You know what, I'm going to do
00:22:45 23 this a little in reverse. I'm going to have you take
00:22:48 24 the stand, if you don't mind, Mr. Smith. Raise your
00:22:51 25 right hand.

00:22:53 1 Do you swear that the testimony you have
00:22:59 2 just given to me and will give will be truth, the whole
00:23:03 3 truth, and nothing but the truth, so help you God?

00:23:05 4 THE WITNESS: I swear.

00:23:07 5 THE COURT: I don't know how long he's going
00:23:08 6 to be, so I thought I might as well make you comfortable
00:23:12 7 and give you a seat.

00:23:13 8 THE WITNESS: Thank you, Your Honor.

00:23:15 9 - - -

00:23:15 10 JAMES SMITH, CROSS-EXAMINATION

00:23:16 11 BY MR. GEORGALIS:

00:23:16 12 Q. Thank you, Judge. Mr. Smith, my name is Chris
00:23:19 13 Georgalis. I'm the prosecutor in this case. I just had
00:23:23 14 a couple questions. One thing that struck me is you had
00:23:27 15 said if the Court required you to drive the Defendant to
00:23:30 16 Ohio, to Toledo for purposes of hearings, that you'd do
00:23:34 17 that. What makes you think that you would be required
00:23:37 18 to do so by the Court?

00:23:39 19 A. Nothing. It's just something I'm willing to do.
00:23:42 20 I'll do whatever, whatever they want me to do as far as
00:23:46 21 if he's going to be transferred to Atlanta and there's
00:23:49 22 any problems with communication or if they feel better
00:23:54 23 with me being there to put eyes on him and/or
00:23:58 24 transportation becomes an issue. I'm just offering
00:24:02 25 that. I have no idea if they would require me to do

00:24:04 1 that or not.

00:24:05 2 Q. Do you understand that it's the Defendant's
00:24:07 3 obligation to appear for the hearings. It's not your
00:24:10 4 obligation. There won't be -- I imagine there won't be
00:24:11 5 a court order saying: Mr. James Smith, you must bring
00:24:15 6 Asif Salim to Toledo on X date.

00:24:18 7 A. I understand that.

00:24:20 8 Q. So when you said if they ask me or require me to,
00:24:22 9 what did you mean by that?

00:24:24 10 A. Well, we pledged our house up for bond purposes.
00:24:27 11 I guess what I'm saying is there's no way that he is not
00:24:30 12 going to be here. If I have to bring him, he's going to
00:24:32 13 come. I have no reason to believe that he would not
00:24:34 14 come. I know it's his obligation, and he's going to do
00:24:38 15 it. I have no doubt about that.

00:24:42 16 Q. You, yourself, said that you would physically
00:24:44 17 drive him from Atlanta to Toledo for each and every one
00:24:48 18 of his hearing and drive him back from Toledo to
00:24:51 19 Atlanta?

00:24:51 20 A. If that's what it took.

00:24:54 21 Q. Not if that's what it took, but you would be
00:24:57 22 willing to do that?

00:24:58 23 A. If that's -- yes.

00:24:59 24 Q. For a case that could go on for many months,
00:25:02 25 several years, you'd take two or three days from work to

00:25:05 1 drive Mr. Salim to Toledo?

00:25:07 2 A. Until I ran out of leave time. And then if I ran
00:25:10 3 out of leave time, I'd ask for unpaid leave if I had to.

00:25:13 4 Q. Okay. One moment.

00:25:25 5 MR. GEORGALIS: Nothing further, Judge.

00:25:27 6 Thank you.

00:25:27 7 MS. MORENO: Your Honor, I did have a
00:25:28 8 question.

00:25:29 9 THE COURT: Sure.

00:25:30 10 - - -

00:25:30 11 JAMES SMITH, REDIRECT EXAMINATION

00:25:31 12 BY MS. MORENO:

00:25:31 13 Q. How close is your home with Sabrina to the family
00:25:34 14 home?

00:25:34 15 A. Depending on traffic, between 20 minutes to 30
00:25:38 16 minutes.

00:25:39 17 Q. How many miles away would that be, would you say?

00:25:41 18 A. It's not very far mileage wise, maybe ten, 12
00:25:45 19 miles.

00:25:46 20 Q. And do you think that they're a close family,
00:25:49 21 Sabrina and Farah and their mother and father?

00:25:53 22 A. Absolutely, very close.

00:25:54 23 Q. And do you visit each other often?

00:25:56 24 A. She goes over there every weekend, and I go over
00:26:00 25 there probably -- approximately every other weekend.

00:26:03 1 MS. MORENO: I have nothing further, Your
00:26:06 2 Honor.

00:26:06 3 MR. GEORGALIS: Nothing further, Judge.
00:26:07 4 Thank you.

00:26:08 5 THE COURT: Appreciate it. You may step
00:26:09 6 down.

00:26:10 7 THE WITNESS: Thank you.

00:26:15 8 MS. MORENO: One moment, Your Honor. I
00:26:24 9 think with respect to my burden of production, Your
00:26:27 10 Honor, I would rest on my papers and rest on my proffer
00:26:31 11 and the testimony received so far.

00:26:35 12 THE COURT: Does the Government have any
00:26:36 13 questions about these documents that we were just
00:26:39 14 provided?

00:26:56 15 MR. GEORGALIS: Judge, in the brief review
00:26:58 16 we've had of this by the FBI, it's our belief that these
00:27:02 17 documents are what they purport to be; they are what Ms.
00:27:06 18 Moreno described them to be; they are evidence of some
00:27:09 19 employment in the UAE during the timeframe Ms. Moreno
00:27:12 20 had suggested.

00:27:15 21 MS. MORENO: Thank you, counsel.

00:27:25 22 THE COURT: Perhaps counsel or someone can
00:27:27 23 tell me what a GIS instructor/technical support position
00:27:34 24 is.

00:27:38 25 The first document, for the record -- we

00:27:42 1 don't have these marked, but there is an employment
00:27:44 2 offer dated September 16, 2012.

00:27:48 3 That's followed by in mostly Arabic a
00:27:54 4 document captioned "Professional License." I'm not sure
00:28:01 5 what that license is.

00:28:04 6 Followed by a document dated July 10, 2013,
00:28:11 7 an employment memo to the Defendant, a position of
00:28:15 8 Professional Services Analyst. Again, I don't know what
00:28:17 9 that is or means. With a subject regarding "Upgrade to
00:28:22 10 family status," which appears to allow, perhaps, travel
00:28:31 11 for family members, I'm not sure.

00:28:34 12 Next document. Same date; to the Defendant;
00:28:38 13 same position; Subject: Incentives. Indicating the
00:28:44 14 company is giving him an incentive. I'm not sure what
00:28:50 15 currency that is.

00:28:53 16 Next, April 14, 2013, memo to the Defendant.
00:28:59 17 Same position. Subject: Increment, listing salary and
00:29:05 18 allowances.

00:29:08 19 All these documents, for the record, are
00:29:10 20 from GISTEC; that's at the top of each of these
00:29:20 21 documents, except for the second document I indicated,
00:29:26 22 which was the professional license. That says,
00:29:28 23 "Government of Sharjah," S-h-a-r-j-a-h, "Economic
00:29:34 24 Development Department."

00:29:36 25 Continuing, the next document, September 30,

00:29:39 1 2015, another employment memo to the Defendant saying:
00:29:46 2 Position: Professional Services Manager. Subject:
00:29:50 3 Increment. And again showing salary and allowances.
00:29:54 4 Next document, Employment Memorandum, again,
00:29:58 5 to the Defendant. Position: Professional Services
00:30:03 6 Analyst. Subject: Allowance for customer visits.
00:30:10 7 Appearing to allow for at least six customers per month.
00:30:16 8 Next, a different heading on the next two
00:30:21 9 documents: International School of Creative Science.
00:30:25 10 First one dated May 18, 2011, offering a position; a
00:30:34 11 commencement date of August, 2011; reporting to Phase
00:30:40 12 Director, P-h-a-s-e, the job title being teacher. And
00:30:44 13 it has several paragraphs indicating salary, probation,
00:30:48 14 benefits, relocation, mobility, additional employment,
00:30:52 15 and confidentiality. There are no signatures on this
00:30:56 16 page. It is addressed to Defendant at the Overland
00:30:59 17 Park, Kansas address.
00:31:02 18 Final document -- I'm sorry, second to final
00:31:05 19 document. This is again from the School of Creative
00:31:08 20 Science dated June 28, 2012, to whom it may concern,
00:31:14 21 certifying the Defendant worked at that School of
00:31:17 22 Creative Science -- not sure where it is -- from
00:31:21 23 September 4, 2011 until June 28, 2012. Reflecting the
00:31:35 24 author being the principal, Walid Ramadan,
00:31:43 25 R-a-m-a-d-a-n. There is a stamp for the International

00:31:46 1 School of Creative Science. And there may be a
00:31:49 2 signature from that stamp also on that page.

00:31:54 3 The final document I have, I think is out of
00:31:56 4 order. I think it is actually the second page to the
00:32:02 5 May 18, 2011 letter to the Defendant at the Overland
00:32:09 6 Park, Kansas address. It seems to fit because there are
00:32:14 7 additional paragraphs, and there is a signature line at
00:32:17 8 the very end with what may be the Defendant's signature
00:32:21 9 indicating he has read, understood, and agrees to the
00:32:24 10 terms of that position.

00:32:26 11 I hope I have accurately summarized the
00:32:28 12 documents that we've been given, that way the record can
00:32:32 13 reflect them. To the extent defense counsel or
00:32:35 14 Defendant can provide additional information helping to
00:32:38 15 explain these, they may do so, or not.

00:32:40 16 MS. MORENO: Yes, Your Honor. With respect
00:32:41 17 to the currency, it's dirhams, the AED, those are
00:32:46 18 dirhams.

00:32:47 19 With respect to the two documents, I just
00:32:49 20 wanted it to be clear, that are entitled -- one is
00:32:52 21 entitled "Professional License," and the other is
00:32:55 22 entitled "Professional Register Certificate" from the
00:32:59 23 Government of Sharjah. These are licenses -- if the
00:33:04 24 Court can look down, you see a category called "trade
00:33:07 25 name." So these are not Mr. Salim's professional

00:33:12 1 license or certificate. This is the certificate and
00:33:15 2 license for the company, Gulf Survey and Engineering
00:33:20 3 Services, which is also Isotec, which was his employer.
00:33:25 4 I just wanted that -- I didn't want the Court to think
00:33:28 5 that we were proffering this as his license because
00:33:31 6 we're not. And also, Your Honor, obviously, as the
00:33:34 7 Court stated, the documents are somewhat out of order.

00:33:37 8 THE COURT: And the document you just
00:33:39 9 referenced is front and back, I should have mentioned.
00:33:41 10 The front is "Professional License" at the top, and the
00:33:44 11 back is "Professional Register Certificate."

00:33:48 12 MS. MORENO: Yes, Your Honor. Thank you.
00:33:52 13 I would submit on that.

00:34:05 14 THE COURT: Does the Government have any
00:34:07 15 questions about these documents?

00:34:10 16 MR. GEORGALIS: No, no questions, Judge.
00:34:12 17 Thank you.

00:34:18 18 THE COURT: Any further testimony or
00:34:23 19 documents from the Defendant or proffers?

00:34:29 20 MS. MORENO: Not unless the Court has an
00:34:31 21 area of concern or questions, I would submit.

00:34:39 22 THE COURT: Does the Government have any
00:34:41 23 evidence or documents or testimony they wish to offer?

00:34:45 24 MR. GEORGALIS: Judge, just in the form of
00:34:46 25 various proffers and various documents the Government

00:34:49 1 would proffer the PSR as mentioned by the Court. We'd
00:34:53 2 proffer the indictment for the Court's consideration,
00:34:55 3 the stipulations that were discussed here today, as well
00:35:05 4 as the Government's brief.

00:35:13 5 THE COURT: Then let me offer this for
00:35:15 6 counsel to comment on. Based on the briefing you
00:35:19 7 presented to me and my understanding of the law, the
00:35:22 8 Defendant faces a presumption of detention by statute,
00:35:26 9 specifically 18 U.S.C., Section 1342(e)(3). Am I right
00:35:33 10 so far?

00:35:35 11 MS. MORENO: Yes.

00:35:37 12 MR. GEORGALIS: I'm sorry. I thought it was
00:35:44 13 18 U.S.C. 3142.

00:35:48 14 THE COURT: Yes. Thank you. You paid
00:35:49 15 attention. I transposed the first few numbers.

00:35:55 16 We have two counts here, a conspiracy -- I'm
00:35:58 17 sorry, Counts 1 and 2 are Conspiracy to Provide Material
00:36:01 18 Support to Terrorists and Providing Material Support to
00:36:05 19 Terrorists. These are federal crimes of terrorism
00:36:08 20 listed under another statute that have maximum
00:36:12 21 punishments greater than ten years. We have a grand
00:36:16 22 jury indictment which, by itself, establishes probable
00:36:19 23 cause to believe the Defendant committed the charged
00:36:21 24 crimes. And I would cite for support for that notion
00:36:27 25 the Sixth Circuit case of Hazime, H-a-z-i-m-e, from

00:36:31 1 1985.

00:36:34 2 My next question for counsel is: There have
00:36:36 3 been a list of proposed conditions. The Defendant
00:36:40 4 argues that they would rebut the presumption. Am I
00:36:43 5 right about that?

00:36:44 6 MS. MORENO: Yes, Your Honor.

00:36:44 7 THE COURT: And the Government would
00:36:45 8 disagree. And the primary basis for the Government's
00:36:51 9 disagreement would be that the Defendant was out of the
00:36:55 10 country for some four years in the UAE. Do I have that
00:37:00 11 right?

00:37:01 12 MR. GEORGALIS: I'd say that would be the
00:37:03 13 primary, Judge.

00:37:04 14 THE COURT: You've also argued the fact that
00:37:06 15 the Defendant would not be in the district, that he
00:37:11 16 would be in Duluth, Georgia. Frankly, I find that to be
00:37:15 17 not a reason in and of itself, perhaps. But I do want
00:37:21 18 to focus on the time outside the country for four years
00:37:26 19 and ask the Government: With the documents it had been
00:37:31 20 presented today, how do you feel about that period of
00:37:34 21 time?

00:37:34 22 MR. GEORGALIS: Judge, the Government's
00:37:35 23 reaction to the documents that were provided today is
00:37:38 24 that these documents actually cut against release of
00:37:41 25 this Defendant. It shows that Mr. Salim is able to live

00:37:45 1 abroad and live a gainful life, to seek and gain
00:37:51 2 employment, to earn a living, in a foreign country. And
00:37:55 3 he did so for four years in the UAE, not coming back to
00:37:59 4 the United States at all. That suggests to us that he
00:38:02 5 is a flight risk, that he can go to another country, has
00:38:06 6 the ability, skill set and talent as well as the will to
00:38:12 7 get a job, to be employed, to live elsewhere, and to
00:38:16 8 leave the district and to leave the country. These
00:38:18 9 documents to us suggest that he is a significant flight
00:38:22 10 risk, more so than most Defendants that come through
00:38:26 11 many federal courtrooms. This is proof that he can live
00:38:29 12 abroad. So that, to us, cuts against his release.

00:38:35 13 THE COURT: Let me ask Defense counsel. Can
00:38:37 14 you comment on that? And also comment on if the
00:38:41 15 Defendant is released, what his plan is. What kind of
00:38:44 16 employment might he seek? Who's going to support his
00:38:48 17 family? What have you to say on any of that along with
00:38:52 18 what the Government just said?

00:38:53 19 MS. MORENO: Thank you, Your Honor. With
00:38:55 20 respect to living abroad, pardon my south Bronx
00:39:03 21 expression, it's damned if you do and damned if you
00:39:05 22 don't. He could live abroad because he could get there
00:39:08 23 legally; he had a passport; he had a visa. He doesn't
00:39:12 24 have any of those things now. There is no carrier that
00:39:15 25 is going to board someone with zero travel documents

00:39:20 1 with no passport.

00:39:23 2 THE COURT: Someone could get a false
00:39:25 3 passport; that does happen.

00:39:27 4 MS. MORENO: This happens in every case.
00:39:29 5 That could be the Government's default position in any
00:39:32 6 case, Judge. I'm suggesting it's not in this case
00:39:35 7 because when you look at the whole, the totality of this
00:39:38 8 case, the support and the ties that he has to his family
00:39:41 9 and the kind of family that he has, that that militates
00:39:45 10 against all of that. And with respect to his plan,
00:39:49 11 frankly, he -- yes, he is -- he graduated from Ohio
00:39:57 12 State University in geographic information systems,
00:39:59 13 which is what he was working on abroad. He could -- I
00:40:08 14 failed to mention, I'm so sorry --

00:40:11 15 THE COURT: I'm sorry, what did you fail to
00:40:14 16 mention?

00:40:15 17 MS. MORENO: I failed to mention, although
00:40:18 18 it was in the Government's papers, but I failed to
00:40:21 19 mention that Asif did not contest deportation when he
00:40:27 20 was arrested by the ministry of the interior in the UAE.
00:40:33 21 So he voluntarily came back to face this case.

00:40:37 22 With respect to a plan, I think that is a
00:40:40 23 dynamic ongoing process. I can tell the Court that he
00:40:45 24 very much wants to work, and that it would be a matter
00:40:50 25 of -- because I've just been through this -- of working

00:40:54 1 out with the Pretrial Services Office the kind of curfew
00:41:00 2 that would allow him to work in whatever capacity that
00:41:02 3 he could. Right now -- and I made a point of that in my
00:41:06 4 papers, which I think again militates for release. This
00:41:10 5 is not a man of means. He doesn't have a cache of
00:41:17 6 money. So right now he is dependent upon his family,
00:41:20 7 and that is something that has really never been the
00:41:23 8 case since he's been married for the last ten years. So
00:41:26 9 there are a number of options for him to explore. I
00:41:30 10 don't want to speculate to the Court, but I know that he
00:41:35 11 very much wants to get back and help support his family,
00:41:39 12 as he's done for the last decade. And this would, of
00:41:43 13 course, be in compliance with Pretrial Services and the
00:41:46 14 kinds of curfews that they do allow for work schedules.

00:41:53 15 THE COURT: So after I consider whether the
00:41:55 16 proposed conditions rebut the presumption, that doesn't
00:42:01 17 end the inquiry. The Government argues even if so, the
00:42:05 18 Court must consider whether detention is appropriate,
00:42:08 19 addressing the factors under 18 U.S.C., Section 3142(g).
00:42:15 20 And those factors include the nature of the crime
00:42:19 21 charged. And here we're talking about terrorist acts
00:42:23 22 and obstruction of an investigation as well. The
00:42:27 23 Government notes in its brief that Anwar Al-Awlaki, a
00:42:33 24 2010 designated key Al Qaeda leader. The indictment
00:42:38 25 details that co-defendants delivered funds to Yemen in

00:42:44 1 July of 2012, \$29,000 total, including \$2,000 provided
00:42:50 2 by this Defendants. The Government also in its memo
00:42:52 3 indicates while that may not seem like a lot of money,
00:42:56 4 placed in context, the Government describes how much
00:43:00 5 harm can be caused by bombs made with as little as
00:43:04 6 \$2,000.

00:43:07 7 The weight of the evidence is another factor
00:43:09 8 addressing the risk of flight, danger to the community.
00:43:12 9 And here we have, the Government alleges in its brief,
00:43:16 10 documented support for terrorism, and specifically a
00:43:20 11 terrorist that the indictment establishes probable
00:43:25 12 cause.

00:43:25 13 I look to the history and characteristics of
00:43:27 14 the Defendant. Thirty-five years old, U.S. citizen,
00:43:31 15 married ten years, four children, no criminal history.
00:43:35 16 Loose ties to the United States, four years outside the
00:43:38 17 United States since 2011. Proposed to stay with
00:43:45 18 in-laws. This has never been his home before. This
00:43:48 19 would be a new place for him and his family. No
00:43:53 20 employment in the U.S.

00:43:55 21 Also looking at the nature and seriousness
00:43:57 22 of danger to the community posed by the release. And
00:44:01 23 again, the Government would point to jihad and terrorism
00:44:05 24 as set forth in the indictment.

00:44:08 25 Taking into account also education and

00:44:10 1 employment history. We've touched on that with the
00:44:14 2 documents that have been provided today from August 2011
00:44:19 3 to November 2015 in the UAE. Residing in Overland Park,
00:44:26 4 Kansas from October of '07 to August of 2011; residing
00:44:30 5 in Pompano Beach, Florida from July of '06 to October of
00:44:34 6 '07. I'm not sure what was going on during those time
00:44:38 7 periods and those places.

00:44:41 8 Defense counsel has emphasized the family.
00:44:45 9 Mother, brother, and sister in Cambridge, Ohio; youngest
00:44:51 10 sister in Pakistan. The family in Georgia. Apparently
00:44:55 11 the father has been travelling in Pakistan for several
00:44:57 12 months, unknown location, unknown occupation. Those
00:45:05 13 are, as I have it, the factors and some of facts that
00:45:09 14 both sides have highlighted.

00:45:11 15 I take it it is the Government's position
00:45:13 16 that the conditions of release are really not a problem
00:45:21 17 for the Government. I know defense counsel has used the
00:45:24 18 phrase almost guaranteed. While the Government might
00:45:30 19 quibble with that description, the Government really
00:45:32 20 doesn't have a problem with the conditions if there were
00:45:34 21 to be a release, but the Government's position is there
00:45:37 22 shouldn't be a release because of the nature of the
00:45:42 23 alleged crime in this case, and the factors under
00:45:45 24 3142(g).

00:45:47 25 Do I have it right?

00:45:48 1 MR. GEORGALIS: That is correct, Judge. The
00:45:49 2 Government believes there are no conditions or set of
00:45:51 3 conditions that would insure the safety of the community
00:45:54 4 or that the Defendant will continue to appear as
00:45:56 5 required.

00:45:56 6 THE COURT: And what really bothers you --
00:45:58 7 those are my words -- is the period of time outside this
00:46:01 8 country. And specifically what bothers you about that?

00:46:06 9 MR. GEORGALIS: Well, Judge, what bothers us
00:46:09 10 about it is the fact that he has been living abroad for
00:46:13 11 four years, that as a U.S. citizen he has not come back
00:46:17 12 to this country, that the only reason that he is here
00:46:20 13 today is to stand trial for federal criminal terrorism
00:46:25 14 charges in Toledo, Ohio. He's not -- he was not brought
00:46:30 15 here to vacation with his family in Georgia. He's here
00:46:33 16 because he was indicted by a federal grand jury on very
00:46:36 17 serious charges. So the only reason he is here is for
00:46:39 18 this case. The fact that he's lived abroad for four
00:46:43 19 years stresses the fact that he has virtually no ties or
00:46:47 20 roots to tie him to this country. He certainly has none
00:46:51 21 tying him to the District, which is why he's proposing
00:46:54 22 to live only in Georgia, not here. So, Judge, the
00:46:57 23 absence of a presence here in this country, the absence
00:47:01 24 of roots here or anything tying into Toledo, those are
00:47:05 25 concerns for us. They suggest that he is a significant

00:47:09 1 flight risk.

00:47:10 2 And the standard for flight risk is only
00:47:13 3 that of preponderance. Having lived abroad, having been
00:47:18 4 deported to come to this country to stand charges to us
00:47:22 5 suggests that he ought to be detained.

00:47:28 6 THE COURT: I take it if you were in the
00:47:29 7 United States during that period of time, you wouldn't
00:47:35 8 be having as much of a problem?

00:47:36 9 MR. GEORGALIS: It would be a different
00:47:38 10 story. It would be more akin to the situation with his
00:47:42 11 brother, Sultane Salim. You have to look at each one of
00:47:46 12 the Defendants as individuals. With Sultane Salim the
00:47:50 13 Government still opposed release given the seriousness
00:47:52 14 of the charges. The seriousness of the charges is also
00:47:54 15 a consideration here, which I'll get to, Judge. But it
00:47:57 16 is a different situation. The absence from this country
00:48:00 17 for four years, it's a paradigm shift.

00:48:04 18 THE COURT: Do you have any information --
00:48:05 19 and I take it it is probably more difficult for the
00:48:09 20 Government to get information on someone who's outside
00:48:12 21 the country than if they're in the country. Have you
00:48:15 22 any information pro or con about the Defendant's
00:48:20 23 activities or emails during that four-year period?

00:48:26 24 MR. GEORGALIS: Could I have a moment,
00:48:28 25 please, Judge?

00:48:28 1 THE COURT: Yes.

00:48:30 2 (Discussion had off the record.)

00:48:51 3 MR. GEORGALIS: Judge, the only conduct of
00:48:52 4 this kind as alleged in the indictment would be the
00:48:55 5 obstruction-related conduct that obviously occurred
00:48:58 6 after he had made the contribution to Al-Awlaki that's
00:49:03 7 alleged in the indictment. I believe there was an
00:49:05 8 interview involving the Defendant in 2012 in the UAE
00:49:09 9 and -- where we would argue on trial he made false
00:49:13 10 statements or was sort of obstructive in that regard.
00:49:17 11 But that's all that we could share at this time.

00:49:21 12 THE COURT: Do you wish to comment? You
00:49:23 13 may. We're going to move on and talk about another
00:49:25 14 topic, but I'll give you a chance to respond.

00:49:26 15 MS. MORENO: Just briefly, as alleged in the
00:49:28 16 indictment, he met with investigators in 2012 in the
00:49:34 17 UAE, FBI agents, voluntarily; he was under no compulsion
00:49:43 18 to do that. He met with them voluntarily. And that is
00:49:46 19 what he said to them is the basis -- the allegation of
00:49:50 20 one of the charges. I.

00:49:52 21 Would also just briefly say, Your Honor,
00:49:53 22 that it is just basically untrue that he has no roots to
00:49:58 23 this country. You met his mother, his brother, his
00:50:03 24 wife, his mother-in-law. He has significant pervasive
00:50:08 25 important family here in the country. Thank you.

00:50:14 1 THE COURT: So I'll give both sides a chance
00:50:16 2 to argue then whether detention is appropriate, given
00:50:25 3 the nature of the crime charged under 18 U.S.C., Section
00:50:29 4 3142(g). I'll let the Government go first on that one
00:50:35 5 since there seems to be a general agreement that
00:50:40 6 proposed conditions and the posting of property and the
00:50:47 7 custodians and the dollar amount are generally
00:50:51 8 acceptable.

00:50:53 9 MR. GEORGALIS: That's correct, Judge. And
00:50:55 10 thank you for the opportunity to argue.

00:50:57 11 As this Court has stated, Mr. Salim is
00:51:00 12 subject to the presumption of detention. Unlike most
00:51:03 13 Defendants that come through this courthouse, the
00:51:06 14 default position is they should be released pending
00:51:08 15 trial. That is not the case here. Given the nature of
00:51:12 16 the crime here, that it is a terrorist charge, that a
00:51:15 17 grand jury has returned an indictment against him
00:51:18 18 finding probable cause that he committed these crimes,
00:51:20 19 and given that the maximum sentence is about ten years,
00:51:23 20 there is a presumption that he be detained. That is
00:51:26 21 something that Congress felt that there are certain
00:51:29 22 Defendants that, based upon the conduct and the charge,
00:51:32 23 they should not be released. And Mr. Salim is one of
00:51:35 24 those individuals. And I --

00:51:37 25 THE COURT: Is it your position in every

00:51:39 1 case involving an alleged terrorist there ought to be
00:51:42 2 detention, or not in every case, but under the facts of
00:51:46 3 this case? Yes.

00:51:47 4 MR. GEORGALIS: Under the facts of this case
00:51:48 5 there should be a presumption. Now, to Ms. Moreno's
00:51:53 6 point, that presumption can be overcome, as the law
00:51:56 7 requires. But the Government believes that Ms. Moreno
00:51:59 8 has failed to overcome that presumption. Simply stating
00:52:02 9 that a living arrangement in this country in another
00:52:06 10 state several states away, that that is simply is not
00:52:11 11 enough to overcome the presumption. As we discussed at
00:52:14 12 length before, the Defendant has lived outside this
00:52:16 13 country for four years with his entire family. He had
00:52:18 14 gainful employment there he earned there. He has the
00:52:21 15 ability, the knowledge, and the skill set to lead a
00:52:25 16 gainful life outside of this country.

00:52:28 17 THE COURT: I'm sorry to interrupt you. I
00:52:31 18 don't want to lose my thought. And you have talked
00:52:34 19 about the fact that he's not in Ohio; he's Georgia. But
00:52:39 20 is there something wrong with the Probation/Pretrial
00:52:41 21 Services in Georgia? Can they not supervise him as
00:52:44 22 effectively as Toledo? Although our people are great, I
00:52:48 23 know. In all seriousness, so what? Georgia, Ohio; if
00:52:54 24 the conditions are good for Georgia, good for Ohio,
00:52:59 25 what's the problem there?

00:53:00 1 MR. GEORGALIS: I guess the main problem
00:53:02 2 there, Judge, is I don't know exactly what Georgia's
00:53:05 3 Pretrial Services are like. I assume that they are just
00:53:08 4 as good as they are up here. The main problem is just
00:53:12 5 getting here. They're living several hundred miles
00:53:16 6 away. It would require a day of travel on the road with
00:53:21 7 an individual -- James Smith, who testified here today,
00:53:24 8 that it -- he seems to be unsure whether he'd be able to
00:53:29 9 even do it. It depends on his leave, I suppose. There
00:53:31 10 are tremendous logistical obstacles to allowing a
00:53:35 11 Defendant that was brought to this country specifically
00:53:37 12 to face terrorism charges in Toledo, and releasing them
00:53:41 13 to Georgia and allowing them to travel across the
00:53:44 14 country multiple times a year back and forth just to
00:53:47 15 appear. It's a great distance away. I think it
00:53:51 16 provides a lot of strain on the system to allow him to
00:53:56 17 be that far and to allow him to travel unsupervised
00:54:01 18 during that period. So it does provide, I think,
00:54:04 19 significant roadblocks and obstacles that a more
00:54:08 20 traditional sort of in-district custodianship would
00:54:12 21 provide.

00:54:12 22 THE COURT: I interrupted you, and you were
00:54:14 23 talking also about his time outside the country.

00:54:17 24 MR. GEORGALIS: Right, Judge. So that, to
00:54:18 25 us, just goes to why we believe that Ms. Moreno's failed

00:54:23 1 to overcome the presumption in this case. There has to
00:54:26 2 be more than just saying: Well, he could live in this
00:54:29 3 place in this state; therefore, the presumption is
00:54:31 4 overcome. It's an important presumption, and we think
00:54:34 5 it requires detention in this case.

00:54:36 6 But even if the Court finds that Ms. Moreno
00:54:38 7 has overcome the presumption, and as we wrote in our
00:54:42 8 briefs, it's not like that presumption just disappears,
00:54:45 9 just goes away. It's always something that the Court
00:54:48 10 should consider and go back to in deciding whether or
00:54:51 11 not Mr. Salim is worthy of release. And so therefore
00:54:54 12 it's always there; it should provide the backdrop to the
00:54:58 13 decision the Court has to make here.

00:55:00 14 But I think the more important part of this
00:55:03 15 part of the analysis is to really focus on his risk of
00:55:06 16 flight and his danger to the community and the focus on
00:55:09 17 the factors.

00:55:10 18 So the first is the nature and circumstances
00:55:12 19 of the offense here, Judge. And obviously as this Court
00:55:15 20 even said, these are very serious charges. The
00:55:18 21 Defendant was charged in a four-count indictment with
00:55:21 22 three charges, that being Conspiracy to Provide Material
00:55:25 23 Support, Providing Material Support, and Conspiring to
00:55:29 24 Obstruct Justice. Those are extremely serious crimes,
00:55:31 25 perhaps the most serious in the entire federal criminal

00:55:34 1 code.

00:55:36 2 To the extent that -- when considering the
00:55:39 3 actual factors, the nature and circumstances of the
00:55:41 4 offense lists as one of those offenses that one might
00:55:46 5 consider as weighing in favor of detention is listed
00:55:49 6 terrorism itself. So it's even specifically delineated
00:55:52 7 in the statute that a terrorism charge is one that the
00:55:57 8 Court should seriously consider.

00:55:58 9 THE COURT: You wouldn't deny, counsel, that
00:56:03 10 terrorism is a serious charge, would you?

00:56:05 11 MS. MORENO: Of course not. That's not my
00:56:06 12 argument, Judge.

00:56:07 13 THE COURT: Let him finish. I'll give you
00:56:11 14 the floor too. I wanted to see where we could have
00:56:12 15 agreement.

00:56:13 16 MR. GEORGALIS: That's good. It's obviously
00:56:14 17 a factor and something for the Court to consider. But
00:56:17 18 going deeper than just the charges itself is the actual
00:56:21 19 conduct here is of serious concern. The indictment
00:56:23 20 alleges that Mr. Salim and his co-conspirators,
00:56:26 21 including his brother, conspired to provide and, in
00:56:26 22 fact, did provide funds to Anwar Al-Awlaki for use in
00:56:30 23 conducting terrorist attacks. Judge, this is not a
00:56:34 24 sting case. This is not a case where the Government
00:56:37 25 provided the funds to Mr. Salim to provide to another

00:56:41 1 Government undercover, which those are very serious
00:56:44 2 cases in and of themselves. This is an entirely
00:56:47 3 different animal. This is funds belonging to Mr. Salim
00:56:51 4 going to an actual -- in 2010 designated real terrorist
00:56:57 5 whose purpose was to conduct attacks against the United
00:57:00 6 States and against the west. And in the months
00:57:02 7 following the contribution to Anwar Al-Awlaki did, in
00:57:06 8 fact, have an attack against the United States, which
00:57:08 9 I'll go in.

00:57:09 10 One of the arguments --

00:57:10 11 THE COURT: Can I ask you to take a breath
00:57:12 12 and maybe a drink of water and slow down a moment.
00:57:17 13 Thank you.

00:57:17 14 MR. GEORGALIS: One of the arguments that Ms.
00:57:20 15 Moreno makes in her brief is that of the \$29,000 that
00:57:25 16 was provided to Anwar Al-Awlaki, only \$2,000 of it came
00:57:30 17 from Mr. Salim, as to somehow signify that that amount
00:57:36 18 is insubstantial or insignificant. Now, the Government
00:57:39 19 disagrees, obviously. I mean, that money might not be a
00:57:43 20 lot of money to Ms. Moreno, but that really misses the
00:57:46 21 point. The question is, or the analysis should be: Was
00:57:50 22 it a lot of money to Mr. Salim, number one? And number
00:57:53 23 two, was it a lot of money to Anwar Al-Awlaki? In
00:57:57 24 response to both questions, the answer is yes. If you
00:58:00 25 look through the PSR, one of the Pretrial Services

00:58:05 1 officers had written that at one point the Defendant
00:58:08 2 stated that his total assets or his only asset, I should
00:58:12 3 say, at the time of the interview was \$20,000 in a
00:58:16 4 checking account. I don't know exactly how that money
00:58:21 5 has fluctuated over time, whether it's gone up or gone
00:58:23 6 down. But if you think about \$2,000 out of, let's say,
00:58:27 7 \$20,000 that he stated he had, that's ten percent of his
00:58:32 8 entire net worth. This is a man who has four kids to
00:58:37 9 support, a man who has a wife, a man who's living
00:58:40 10 overseas. It shows the degree to which he was willing
00:58:46 11 to support the cause and the amount of which he was
00:58:49 12 willing to contribute. And while Ms. Moreno might think
00:58:53 13 that's not a very large amount, with respect to Mr.
00:58:56 14 Salim it's an enormous amount. Think about cutting a
00:59:00 15 check of ten percent of your net worth and just giving
00:59:03 16 it to somebody else; you don't know who that person is
00:59:08 17 in this context. So that's number one.

00:59:10 18 The other factor is: Was it a lot of money
00:59:12 19 to Anwar Al-Awlaki? As this Court has pointed out in
00:59:15 20 our brief, clearly it was. The AQAP, Al Qaeda in the
00:59:24 21 Arabian Peninsula, has its own publication. In November
00:59:29 22 of 2010, as we wrote in our brief, they devoted some
00:59:33 23 time to a piece about failed terroristic attacks. And
00:59:37 24 one in that particular piece related to printer
00:59:41 25 cartridges that were outfitted with bombs and how,

00:59:46 1 although that was a failed attempt to put those printer
00:59:50 2 cartridges on a Northwestern, I believe, plane, it only
00:59:54 3 cost them \$4,200 to undertake that attempted attack. So
01:00:01 4 that just goes to show how far money can go to support a
01:00:06 5 person who's willing to conduct terroristic attacks
01:00:09 6 against the United States.

01:00:10 7 Also in the brief were other examples. I
01:00:12 8 believe --

01:00:13 9 THE COURT: I've read the brief, so you
01:00:14 10 don't need to redo the brief, for my purposes anyway.
01:00:19 11 I'd rather you hit the highlights and add to the brief
01:00:23 12 or add further comment that's not reflected in any of
01:00:27 13 the writings that we've reviewed or the documents.

01:00:30 14 MR. GEORGALIS: Okay. I think then just the
01:00:32 15 percentage of Mr. Salim's net worth of that \$2,000 is
01:00:36 16 something I think the Court should consider that was not
01:00:38 17 in the brief.

01:00:39 18 And, Judge, the other thing to consider is
01:00:42 19 obviously the weight of the evidence in this case. And
01:00:45 20 it's not an invitation to conduct a mini trial here.
01:00:49 21 It's really to look at what the indictment has to say
01:00:52 22 about what Mr. Salim had engaged in. In response to Ms.
01:00:56 23 Moreno's brief, she seems to suggest that Mr. Salim was
01:01:00 24 simply CC'ed on a lot of emails; and therefore, the
01:01:03 25 weight of the evidence and the case against him is

01:01:06 1 somehow weaker. The Government disagrees with that.
01:01:11 2 Some of the most important emails came from Mr. Salim.
01:01:13 3 One of the ones that sticks out in my mind is in the
01:01:16 4 brief, relates to Mr. Salim's statement to his brother
01:01:18 5 upon cutting the check to: Get it done. That is not
01:01:24 6 something that one would say to authorize some sort of
01:01:30 7 charitable contribution to a religious outfit or
01:01:36 8 charitable organization. The Government believes
01:01:38 9 there's more to it than that, that it's an important
01:01:41 10 statement, an important mission, that there is -- one
01:01:45 11 can infer that there's some almost chest pounding there.
01:01:50 12 There's almost like battle cry to a certain extent. We
01:01:54 13 think that's an important statement, and it's an
01:01:57 14 important statement that Mr. Salim made, and it's in the
01:01:59 15 indictment.

01:02:00 16 As far as the history and characteristics of
01:02:03 17 Mr. Salim go, we've discussed a lot of these in the
01:02:05 18 sense he has no employment in this district or in
01:02:08 19 Georgia or in the country. He has no ties at all to
01:02:10 20 this district. He arguably has some that were proffered
01:02:13 21 here today in Georgia. He's lived outside the United
01:02:17 22 States for four years.

01:02:18 23 With respect to the custodians that we've
01:02:20 24 seen that were brought here today, Judge, and my count
01:02:23 25 might be wrong, but I believe three of the custodians

01:02:26 1 have no idea what this case is even about. They have no
01:02:29 2 idea that it's a terrorism charge and the seriousness of
01:02:32 3 the charge itself. The one custodian that does know
01:02:35 4 something about the case knows -- seemed to me to be
01:02:39 5 pretty limited in that it's simply a conspiracy case
01:02:42 6 with some terrorism charges and that it was serious. To
01:02:46 7 us these are not custodians that grasp the gravity of
01:02:50 8 the charge and the gravity of the situation and that
01:02:52 9 they might be unfit to be custodians. One of the
01:02:55 10 custodians, James Smith, never even met him until today.

01:03:00 11 So, Judge, again the Government stresses
01:03:03 12 that the only reason the Defendant is here today is to
01:03:06 13 face terrorism charges in Toledo in the Northern
01:03:10 14 District of Ohio; therefore, we think that release --
01:03:14 15 that there are no conditions or set of conditions that
01:03:16 16 would insure his appearance or insure the safety of the
01:03:19 17 community.

01:03:20 18 THE COURT: One final question, then I'll
01:03:22 19 turn the floor over to defense counsel.

01:03:23 20 Defense counsel has made the point a couple
01:03:28 21 times how cooperative the Defendant was, cooperated with
01:03:30 22 the interview abroad, cooperated in coming back to this
01:03:35 23 country; suggesting, I think, that that cooperation
01:03:37 24 reflects good intentions on his part. Your comment?

01:03:41 25 MR. GEORGALIS: Well, Judge, I will say he

01:03:45 1 was interviewed in 2012. It's not like he just hopped
01:03:49 2 on a plane and came back to the United States to deal
01:03:51 3 with the investigation. We required a grand jury to
01:03:56 4 indict him. It required his visa in UAE to be revoked.
01:04:00 5 It required the UAE to deport him to this country in
01:04:03 6 order for him to be here. It's not like he just
01:04:04 7 appeared in this country of his own free will to face
01:04:07 8 the charges alleged against him. I guess the
01:04:11 9 cooperation is in the eye of the beholder, but I would
01:04:14 10 not consider what he's done so far cooperative.

01:04:17 11 One moment please, Judge.

01:04:33 12 THE COURT: Sure.

01:04:33 13 (Discussion had off the record.)

01:04:33 14 MR. GEORGALIS: I think that's all we have,
01:04:36 15 Judge.

01:04:36 16 MS. MORENO: I just prefer to stand, Judge.

01:04:38 17 THE COURT: However you like to do it as
01:04:40 18 long as we can hear you, and as long as you don't talk
01:04:43 19 too fast.

01:04:44 20 MS. MORENO: All right. I will be careful.

01:04:48 21 You know, Congress could have made these
01:04:52 22 offenses with an irrebuttable presumption, Your Honor.
01:04:58 23 They could have done that. They did not do that. They
01:05:02 24 decided that these cases and others would have a
01:05:07 25 presumption that could be rebutted given an adequate

01:05:11 1 showing.

01:05:12 2 THE COURT: The Government doesn't dispute
01:05:13 3 that, do you?

01:05:14 4 MR. GEORGALIS: We do not, Judge.

01:05:16 5 MS. MORENO: Well, they kind of talk like
01:05:18 6 this is a non-bailable offense; this is a terrorism
01:05:21 7 offense. We know how serious it is, but it is not a
01:05:25 8 non-bailable offense.

01:05:26 9 And I was glad to hear that the
01:05:29 10 Government candidly told the Court that they also
01:05:36 11 opposed the co-defendant, Sultane Salim's, release, who
01:05:41 12 lived in the country. It didn't matter, really, in the
01:05:45 13 Government's eyes if you live in the country, don't live
01:05:48 14 in the country. They're going to oppose because it's a
01:05:50 15 terrorism case really.

01:05:52 16 And I say to this Court that that's just not
01:05:54 17 enough. That if we have significant conditions -- we
01:05:59 18 have testimony from the family. James Smith's
01:06:04 19 testimony, I think, is really rather remarkable. In
01:06:07 20 fact, it is important, and I think that he does not have
01:06:12 21 any emotional investments or allegiance to Asif Salim.
01:06:17 22 This is a former homicide detective, law enforcement guy
01:06:22 23 who has told this Court under oath that he would do
01:06:25 24 whatever it takes to bring Asif Salim to any proceedings
01:06:30 25 that he has. I think that's very compelling in this

01:06:33 1 case.

01:06:35 2 I'm not going to go over the arguments in
01:06:38 3 our brief, Judge. We've now given the Court paperwork
01:06:43 4 that shows what he did in terms of his employment for
01:06:48 5 the four years out of the 35 years that he's lived in
01:06:51 6 the United States, four years he worked in the UAE.

01:06:58 7 Counsel misapprehends what I said about the
01:07:01 8 \$2,000 in my brief. I didn't argue that that was an
01:07:06 9 insignificant amount. What I said was that their
01:07:09 10 allegations were limited to this single check for
01:07:14 11 \$2,000, that, by the way, was not made to Anwar
01:07:19 12 Al-Awlaki, who at the time was not a designated
01:07:22 13 terrorist -- let's not forget that either -- but was
01:07:26 14 made apparently to a co-defendant, who the Government is
01:07:30 15 going to say then got this money somehow to someone
01:07:34 16 associated with Anwar Al-Awlaki. That's their case
01:07:38 17 here.

01:07:40 18 So I don't want this to be a mini trial. I
01:07:43 19 think that when the Court looks at the weight of the
01:07:46 20 evidence and the seriousness of the offense, you've got
01:07:49 21 to tie that back to: Are there any set of conditions
01:07:52 22 that you can set that will protect the community,
01:07:56 23 rightly so, and make sure that he makes his court
01:08:00 24 appearances? And I think that we have submitted to this
01:08:03 25 Court ample reason, ample grounds, testimony and

01:08:08 1 conditions that two Pretrial Services officers have
01:08:12 2 found would be valid for release. We have the Virginia
01:08:17 3 Pretrial Service office that recommended his release to
01:08:20 4 Georgia, given a panoply of conditions, and now we have
01:08:27 5 this one too. And I would submit it, Your Honor.

01:08:30 6 THE COURT: Any final words from the
01:08:32 7 Government?

01:08:32 8 MR. GEORGALIS: No, Judge. Thank you.

01:08:34 9 THE COURT: Thank you. Thank you both.
01:08:36 10 This Court is going to take this matter under
01:08:38 11 advisement. It's my plan to issue an order one way or
01:08:43 12 the other tomorrow, and I'm going to take time between
01:08:51 13 now and then to reflect. I appreciate your help today.
01:08:56 14 I think I'd like counsel to check in with my deputy
01:09:02 15 clerk before you leave in case there's some paperwork
01:09:06 16 that we may need from you. Other than that, we are
01:09:09 17 adjourned.

18 (Concluded at 3:55 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s/ Tracy L. McGurk_____

____2/28/17____

Tracy L. McGurk, RMR, CRR

Date